Private

App. F. IX-4

1933-34 (CB)

File No. 161/33

Serial Nos. 245-

Previous References

CB. 161-33-1 (C.C.R. 61 of 33-34)

CB 21-33-1 to b

Rem. 169-32-1-9

CB 33-31-145-(C.C. No 23 of 31-34)

Later References.

CB. 189-34-102

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 245-

Part B for March 1933-

SUBJECT.

Representation of Mr. V. Duraiswamy Ayyar, for reconsideration of the orders directing his reduction to the grade of an Accountant.

WD 01965—GPB—15,000—7-7-34

2776/34 P. Representation of V. Dwarakanath

804

General and Revenue Secretariat | File No. | of 193 | [App. F. III—2

Serial No.

Memo No. C. 1946/34-35 dated 21st Nov 1934 from Rev Comr in Mysore forwarding the Representation of V. Dwarakanath requesting that he may be restored to his appointment as Asst. Comr.

Subd with the connected files.

Copy of Judgment of High Court in connection with the Shimoga Rioting Case has been received in the Law Section, Protection Br. of the Prohn Branch may perhaps be requested to put up a copy of Judgment for reference.

MuR
28/11/34

Prohn Br, W.C.

CJR 28/11/34

Law.

When putting up the file relating to this case, please put one more copy typed for being put in this file.

28/11

A Copy of the Judgt is put up.

TSD 4/12 MST

CB WC.

Submitted for orders.

[The explanations of the present A.S.P., & of the Public Prosecutor have been called for with reference to the remarks in the Judgment]

CJR 27/12/34

Will you please speak to me

RL
12/12

NOTE—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34

Serial No.

7) The charges against Mr. Dwarakanath were

(1) partiality towards Hindus,

(2) taking down statements of injured Mahomedans while they were not in a fit state to make coherent statements,

(3) disobedience of the orders of the Inspector-General of Police to transfer a Sub Inspector.

8) As regards the third charge, it has been found (page 2 of Final Note of First Member) that Mr. S. Dwarakanath had not any mala-fide intention and much importance need not be attached to it.

9) The High Court finds that the allegations against Mr. Dwarakanath which ~~form~~ form the basis of the second charge are baseless and that the statement of Syed Karim was recorded with the knowledge of the Deputy Commissioner. The High Court holds that there is nothing irregular or unusual in attestations being taken to the statements recorded by Mr. Dwarakanath and that it was the duty of the District Superintendent of Police to take part in the investigation. The High Court finds on the other hand that Chutney Sheriff and Syed Karim are entirely ~~un~~ trustworthy.

10) The allegations constituting the second charge have a bearing on the first charge also, inasmuch as the motive imputed for fabricating the statements is the intention to help the Hindus. Since the High Court Judgment indicates that the theory of such a motive is unfounded, this part of the reasoning in support of the first charge would fail.

NOTE—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34—P.

Serial No.

(11) But one of the grounds in regard to the first charge was the fact that while the Mahomedan accused were all arrested and treated with utmost strictness, only two Hindu accused were arrested and Mr. Dwarakanath failed to arrest the other Hindu accused who were charged with non-bailable offences. This matter did not come up before the High Court.

This fact is well established & that alone sufficient to fully justify taken action against Mr. D.

Chief Secretary 22/1/35

(12) As pointed out by the Pl. Secy in his note, the High Court has come to the conclusion that Mr. Dwarakanath was blameless in some matters in respect of which Govt thought on the material before them, that he was blameworthy. Whether, in the circumstance, the disciplinary action taken against him should stand or be modified is a point which seems to require consideration. If appears, the I.G.P. might be consulted

To be sent to I Month after taken Put

1st member RG
Dewan 10/1/35

OFFICE OF THE 1ST MEMBER OF COUNCIL 15 JAN. 1935 No. S171

(13) The representation of Mr. Dwarakanath might be sent to the I.G.P. for remarks by 14.1.35

DEWAN'S OFFICE 15 JAN 1935 No. 3834

(14) MS 16-1-35

Secy to Member

RG 17/1/35

NOTE—Contn. Sheet No.

Representation qur V. Dwarakanath

CB File No. 804/120 of 1934. | General and Revenue Secretariat

CHIEF SECRETARY. 10 JAN. 1935

(13) Subs with a draft for approval.

KmR 18.1.35

CJA

16/1/35

RR

21/1/35

RO. 1572 dy 21.1.35

The Inspector General of Police.

Forwards a copy qur Representation qur V. Dwarakanata for remarks.

Encs A

Letter no. C.C. 81 of 34-35 dated 24th Jan. 1935 from the I.G. of Police. Stating that he sees no need to reconsider the orders already passed or for any consideration of this latest representation

(14) Subs with reference to member's orders in para 13 above.

KmR 25/1/35

(Chief Secretary) 26/1/35

CJA

(Under Secy) C/S RR

(1st Member) 26/1/35

Drawn

CHIEF SECRETARY. 26 JAN. 1935

(15) As pointed out qur I.S.P. the counsel for Dwarakanath cannot appeal in case before the High Court. All the materials for a decision on this point were naturally not placed before the High Court. I have had

Serial No.

DEPUTY'S OFFICE
26 FEB. 1935

This point examined of the Madras Law Dept, where typed note is annexed. On material before Govt, (most of which was not before the High Court), the Govt have formed that Mr Devaraka Nath's conviction in connection with the investigation of the cases arising out of the Thanjam disturbances was clearly partial and biased in favour of the Hindus. Papers with the P.S.P. that the order passed regarding Mr Devarakanath should admit of reconsideration a modification by Govt.

Devan 24.2.35

OFFICE OF THE FIRST MEMBER OF COUNCIL
26 FEB. 1935
No. 616-9

2) I agree with the above. There is no reason why the Madras Govt should not issue the order already passed in this matter. I am sure the Govt would be glad to have this matter finally disposed of.

26-2-35

Order may issue accordingly.

by

27(illegible)

RR

28/2/35

NOTE—Contn. Sheet.

Representation of V. Dwarakanath

File No. 1209 of 193 .

General and Revenue Secretariat

Rules with a draft for approval

KMR
1/3/35
Cpl

Under Secy) Issue
6/3/35

For perusal before issue

Cpl 1/3/35)
Chief Secy

RR
5/3/35

No. 1871 Dy 6.3.35
The Secy Govt

States that Govt see no reason to reconsider his orders already passed in the matter

No 1872 Dy 6.3.35
The D. G. of Police

Forwards a Copy of the above

By

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

A note examining the Joint
how far the High Court Judgment
in the appeal filed by the
Simon accused in the Shimoga
Disturbances, affects the
Conclusions arrived at by
Govt in their order of
16 June 1934 is placed
below and is submitted
as personally directed.

1st member) BRP
22/2/35

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

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The Government Order of 16th June 1934 is based on the finding of Government that Mr. Dwarakanath's conduct in connection with the investigation of the cases arising out of the Shimoga Disturbances was clearly partial and biassed in favour of the Hindus. This is what might be called the general charge and it depended on two subsidiary charges, namely -

(1) relating to the differential treatment meted out to the Hindu and Muslim accused in the cases and

(2) concerning the examination of Chutney Sheriff and Syed Karim when they were in the Hospital. In coming to a conclusion on these points, reliance was placed not only on the evidence recorded in the judicial proceedings but also on the statements made during the inquiry by the Inspector General of Police as well as on the reports made by that officer and the Deputy Commissioner of the District. The explanations offered by Mr. Dwarakanath were also considered and his previous history was duly taken into account.

2) The question is how far the Government Order passed on 16th June 1934 ~~are~~ is liable to be reconsidered in the light of the judgment of the High Court made in the appeal case filed by the Hindus. It is clear from a perusal of the judgment, that the question before the High Court was not so much the conduct of Mr. Dwarakanath for which he was punished by Government but it was the conduct of the Public Prosecutor in treating Mr. Dwarakanath

NOTE—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34

Mr. Dwarakanath in the manner he was treated, especially when he was examined on behalf of the prosecution. Any observations that the High Court made regarding Mr. Dwarakanath were so made only incidentally. It is also clear that as remarked by the Inspector General of Police, the High Court had not all the information and materials that Government had when they passed the orders in June 1934. The High Court had to restrict their attention only to the evidence legally produced before them and could not take into account all the circumstances that led Government to come to a decision regarding the conduct of Mr. Dwarakanath.

3) For instance, while the High Court finds in para 27 of the judgment, that "the investigation does not appear, so far as the evidence goes, to have been as prompt as it should have been", it was of course not called upon to fix up responsibilities in the matter of the unsatisfactory investigation of the case. In para 13 of the judgment again, it is said that "it is a very strange thing in this case that no information was available against any of the accused in the case for so many days, when there were witnessess whose evidence could have been obtained, if they had not themselves come forward, by an enterprising investigating officer". But why the investigating officer did not show this enterprise was not a

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question which the High Court had to consider. Again the facts regarding the differential treatment between the Hindu and Muslim accused were not placed before the High Court and perhaps were not relevant to the case before the court, except for showing the conduct of the officer concerned.

4) In the absence of all this information the High Court therefore naturally started with the presumption that public officers like the D.S.P. and the Medical Officers concerned were bonafide acting in the discharge of their official duties. The prosecution did not place any satisfactory evidence creating doubts regarding such bonafides. The High Court therefore all the more felt surprised at the attitude taken by the prosecution in alleging that the statements of Chutney Sheriff and Syed Karim taken by Mr. Dwarakanath when he was D.S.P. were so taken whey they were not in full possession of their mental capacity. The medical witnesses did not support this allegation and the High Court was not shown any reasons to doubt the veracity of these witnesses. The prosecution appears to have merely relied on the internal evidence afforded by the statements themselves, but this only made the High Court infer that Chutney Sheriff and Syed Karim were unreliable witnesses. The conduct of Mr. Dwarakanath in taking down these statements himself when he was ~~tke~~ not the investigating

NOTE—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34

officer and his obtaining the signatures of the parties to the statements were easily disposed of because the High Court did not see anything illegal or irregular in such conduct. And the High Court was all the more impressed because in the evidence of one of the doctors, it was said that Syed Karim's statement was taken with the knowledge of the Deputy Commissioner. The Deputy Commissioner however has said in his report of 30-4-34 that this was a baseless and mischievous theory, but this contradiction by the Deputy Commissioner could not be placed before the High Court since it was not on the record. The Court therefore came to the conclusion that the prosecution in making this allegation against Mr. Dwarakanath was throwing wholesale aspersions against three executive heads of the District namely - the Deputy Commissioner, the D.S.P. and the D.M.O.

which of course was not before the H.C.

5) But still the question remains as to what the motive of Mr. Dwarakanath was in placing these statements of Chutney Sheriff and Syed Karim on the record. The statements contained allegations which to the knowledge of Mr. Dwarakanath were false and one can also presume that Mr. Dwarakanath knew that these statements would hopelessly damage the prosecution case, which he himself was directing at the moment. The Inspector General of Police says and the Government accepted this view that the

Serial No.

only inference to be drawn is that Mr. Dwarakanath in placing these statements on record wanted to pin down these persons to statements which would weaken the case against the Hindu accused. The High Court however holds that on the materials placed before them such an inference could not be drawn and in the judgment very strong language is used against the Public Prosecutor for his having made during the course of the prosecution such allegations against the District Superintendent of Police. In the view of the High Court, "the proper time for making such allegations and for trying such allegations, if they have to be made against any public officer in connection with a criminal case, is after that criminal case has been disposed". This is a very wholesome principle and had this been followed, the confusion of issues which perhaps have now occurred would have been avoided.

6. CONCLUSION. The High Court has viewed the question of Mr. Dwarakanath's conduct only so far as it related to the examination of Syed Karim and Chutney Sheriff in the Hospital and no doubt has come to the conclusion that no blame could be attached to him on this account. If this incident is viewed by itself, this conclusion has of course to be accepted. But when this is considered along with the general charge of partiality in favour of the Hindus, it is possible to arrive at a different conclusion.

NOTE—Contn. Sheet.

WD 01955—GPB—22,500—12-6-34

22.2.35

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Friday, the 5th day of October 1934.

Present

Mr. H. D. C. Reilly, Chief Justice

and

Mr. Justice A. S. R. Chari.

Petition of Criminal Appeal No.64 of 1933-34

against the convictions and sentences passed by the Additional Sessions Judge, Shimoga, under Sections 148, 304(2),323 and 325, I.P.C. in the case of 1st Appellant - 1st Accused and under Sections 147 and 325 of the I.P.C. in the case of Appellants 2 to 6 - Accused 2,4,7,10 and 15, in Shimoga Sessions Case No.8/33-34.

Appellants:-

1.Govinda Singh alias Kalu
2.Vital Rao) 2 to
3.Ganesha Rao) 6 on
4.Bhavani Singh) bail.
5.Rama Rao Pavar)
6. Madhu Ram)

(Accused 1,2,4,7 10 and 15)

Heard:-

Messrs. T.G.Narayana Iyengar and M. Narayana Rao for all the Appellants

Mr. K. S. Jayaram Iyer for Appellants 2 and 3

Mr. A. R. Nageswara Iyer, Government Advocate for Government.

JUDGMENT.

J U D G M E N T

5th October 1934.

THE CHIEF JUSTICE

1) This is a very unsatisfactory case. The six Appellants before us were among seventeen persons, who were accused in the Sessions Court of committing certain offences at Shimoga on the 7th of May 1933. All the appellants, who were Accused 1,2,4,7,10 and 15 in the case, were convicted of rioting on that occasion, and Accused 1 was convicted of the more serious offence of rioting armed with a deadly weapon. All these Appellants were also convicted of causing grievous hurt to Chatney Sheriff, Prosecution Witness No.22, on that occasion. Accused 1 was convicted of culpable homicide by killing one Nanne Sab on that occasion and also of causing simple hurt to Zainulabdeen, Prosecution Witness No.17. All the accused in the case except Accused 1 and 3 were also charged with culpable homicide in respect of Nanne Sab's death under the provisions of Section 149 of the Penal Code, and there were some other charges against some of the Accused; but they were all acquitted except of the offences which I have mentioned and of which the Appellants before us were convicted.

2) There is undisputed evidence that Nanne Sab died at Shimoga on the 7th of May 1933 from fractures of the skull. The post mortem examination made on his body by the District Medical Officer, Prosecution Witness No.32, on the 8th of May shows that he had three external wounds on the head, none of which was large, but underneath the wounds there were complicated fractures of the skull. And the District Medical Officer also found that his right tibia had been broken.

3) Chatney Sheriff, Prosecution Witness No.22, was examined on the 8th of May 1933 at the Shimoga hospital by a Sub-Assistant Surgeon, Prosecution Witness No.8, who found upon him six

contused wounds on the head and two contused wounds on the shoulder-blades, and besides some other minor injuries the whole of both his legs were contused. Later on it was found that both his legs were broken. He was an in-patient in the hospital for more than one and a half months. Prosecution Witness No.8 has said that even allowing only two blows for causing the condition in which each of his legs was found - which seems from his description a very safe under-estimate - Chatney Sheriff must have received at least seventeen blows. Prosecution Witness No.8 also examined Zainulabdeen on the 8th of May 1933 in the hospital and found on him a contused wound on the right side of his skull, a lacerated wound on his forehead and swelling on the back of his left hand. There is another witness in the case, Prosecution Witness No.23, Syed Karim, in respect of whom there was a charge of causing grievous hurt against some of the Accused, but of which they were acquitted. He it appears was examined by another Sub-Assistant Surgeon, Prosecution Witness No.9, at the Shimoga hospital in the early hours of the 8th of May 1933. The Sub-Assistant Surgeon found upon him an incised wound, 3" long, scalp-deep, on the right side of his skull besides two other small wounds on his head. He was an inpatient in the hospital for more than a month. And another Sub-Assistant Surgeon, Prosecution Witness No.31, says that on the 15th of May 1933 it was discovered that under the large external wound on Syed Karim's head there was a slight fracture of the outer table of the skull. There is no dispute that those four men, who were all Muhammadans, received those injuries in Shimoga town on the night of the 7th of May 1933.

4) In the charge of rioting it is alleged against all the Accused, who are Hindus, that they had the common object of "teaching a severe lesson to Ghouse Sheriff alias Chatney Sheriff (Prosecution Witness No.22) and other Mussalmans by beating them". There is a good deal of evidence that before

the 7th of May 1933 there had been some reasons for ill-feeling between the Hindus and Mahammadans of Shimoga but nothing which explains why there should have been an outbreak between them on the night of the 7th of May 1933. I do not think it is necessary to discuss the evidence of that ill-feeling or the causes of it because it is admitted that there were occurrences on the night of the 7th of May in Shimoga town which show that on that occasion there was great ill-feeling between some Mahammadans and some Hindus. We are informed that a number of shops and houses belonging to Hindus were pillaged and set on fire that night by Mahammadans, and that has formed the subject of another case. The occurrences with which we are concerned in this case according to the prosecution happened earlier in the night of the 7th of May than the attack on the shops and houses of Hindus by Mahammadans which I have mentioned.

9 The prosecution story is briefly that about 9 or 9-30 on that night a considerable number of Hindus were collected at or near a place called Basawanna Chowk, which appears to be the crossing of the main street of the town, running north and south, and the east-to-west road going on the east to Bestarkere or Sunnadakere and on the west to Upparkere: Chatney Sheriff, Prosecution Witness No.22, was outside a fruit-seller's shop near that crossing, Basavanna Chowk, but rather along the westward road and opposite a temple, which is on the south side of that westward road: Chatney Sheriff sang some songs or - as some of the witnesses say - used abusive language and was then attacked by some of the Hindus, who were already collected there and armed with clubs; he received serious injuries on that occasion and was carried off by some of the Accused along the road westward; Nanne Sab, who heard the noise, came up to ask what it was about, and he was knocked down and hit violently on the head with the result that he received the injuries of which he died: Syed Karim, Prosecu-

tion

Witness No.23, came along after Nanne Sab had received his injuries and had fallen down near or not far off from one of the corners of the crossing, Basavanna Chowk, and he toowas attacked and hit violently on the head with the result that he fell down and became unconscious. At some stage between the first attack on Chatney Sheriff and the attack on Syed Karim * at what exact point the evidence does not make it clear - Zainulabdeen, who was at a Mahammadan shop at a little distance north of Basavanna Chowk in the main street, was also attacked as he was standing outside that shp and received his injuries there. The exact time at which these events took place is not unnaturally left a little vague because none of the persons concerned would have been carrying watches, nor was there any clock in the immediate neighbourhood, so far as the evidence goes. But they appear to have happened between 9 and 9-30 p.m. The other events, in which it is alleged that certain Mahammadans pillaged and burnt some of the shops of Hindus, appear, so far as the evidence in this case goes, to have begun very soon afterwards but definitely after the events with which were concerned in this case.

6) It was suggested by Mr. Jayarama Iyer for some of the Appellants before us that it was possible that the four Mahammadans, who received their injuries in the events with which we are concerned in this case, received them when some unknown Hindus were defending their property against the attack of Mahammadans upon Hindu shops and houses. That is not any part of the defence of the Accused in this case. No one set up any plea of self-defence. They all denied that they had anything whatever to do with the injuries inflicted upon Nanne Sab and the three other injured Mahammadans, who have given evidence in this case. And it is clear from the evidence of certain Police Officers, which has been accepted by both sides in the course of the arguments before us as correct, that all the persons with whose injuries we are concerned in this case received them before the Mahammadans attacked any Hindu shop. Prosecution Witness No.10, the Jamadar of the Town Police Station, which is about a quarter of a mile

south of Basavanna Chowk, says that he was in the Station at 9-35 P.M. that night, when Accused 1's mother came and gave him some information that there was a row going on at Basavanna Chowk. She has not been examined as a witness, and we do not know exactly what she told the Jamadar. He says that he called out the Daffedar and fourteen Constables, who were in the Police Station, and went, after sending a message to his superior, the Sub-Inspector, straight to Basavanna Chowk, which he reached not later than 9-45 p.m. when he got there, he found a large number of Mahammadans already collected with sticks and stones and Nanne Sab and Syed Karim lying injured on the road: no Hindu shop had then been interfered with. Prosecution Witness No.11, the Sub-Inspector, mentions that he got to Basavanna Chowk about 10-10 P.M. or soon after and found about 100 to 150 Mahammadans beating on shop doors and Accused 1's shop, which is a short distance along the road leading eastward from Basavanna Chowk, already broken open and pillaged and bicycles, which had been in it, burning on the road, and it was not possible to put the fire out. On that evidence it is impossible to mix up the events with which we are concerned, i.e., the injuries to Nanne Sab and the three Mahammadans who are prosecution witnesses in this case, with the subsequent attack on Hindu shops by Mahammadans so as to represent the injuries inflicted upon the Mahammadans as having been inflicted ~~upon the Mahammadans as having been inflicted on them~~ on them by persons who were defending their property in the later events.

7) Mr. Jayarama Iyer also suggested that these Mahammadans had received their injuries in a drunker brawl among themselves. There is no evidence to show that any of them was drunk, though there is evidence to show that Syed Karim had been drinking. However, as the learned Government Advocate has pointed out, it is in the highest degree improbable that Chatney Sheriff could have received his very numerous injuries in the course of any drunken brawl between the Mahammadans themselves.

8) The evidence as to what happened to Chatney Sheriff as told by himself is that he arrived at Basavanna Chowk at 9 or 9-30 that evening and found a number of Hindus collected there with canes, sticks and clubs: he sang a Moharram song, and a neighbouring shopkeeper, Prosecution Witness No.18, told him to stop. He says that there was nothing offensive in what he was singing; but it has to be noticed that even a fellow Mahammadanx thought it necessary to try to stop it. He goes on to say that Accused 1 who was among the Hindus present, came and abused him, and Accused 3 told the other Hindus there to beat him and he (Accused 3) would be responsible; on that accused 1 beat him on his right knee, and he fell down: Accused 2 beat him on his left knee, and Accused 12 hit him on the head with a sword. It may be remarked that among the numerous injuries found upon him by Prosecution Witness No.8, the Sub-Assistant Surgeon, there was none which would correspond with any of those blows, and there was nothing to show that a sharp instrument like a sword was used upon him. After that he says that Accused 4 and 7 began to hit him, and Accused 13 urged them on: Accused 10 and 17 and others were present: at that stage he lost consciousness and did not regain his consciousness till he found himself in the Shimoga hospital many days later. Prosecution Witness No.18, who has a shop a little way xxxx up the main street from Basavanna Chowk, at first professed to have seen Accused 1 and others beat Chatney Sheriff but afterwards says that he cannot definitely say who did so. Prosecution Witness No.24 says that he was accidentally passing that way, and he saw 50 to 60 Hindus at the Chowk with clubs in their hands: Chatney Sheriff was abusing some one in vulgar Hindustani: Accused 1 and 12 questioned Chatney Sheriff, and then Accused 1 hit Chatney Sheriff on the leg: 5 or 6 others whom the witnesses cannot identify, then hit Chatney Sheriff on the head, Chatney Sheriff fell down, and some of the people present carried him away westwards. Prosecution Witness No.25 says that Accused 12 abused Chatney Sheriff and told others to beat all Mahammadans: Accused 1 hit Chatney Sheriff on the leg,

and Chatney Sheriff fell down: others including Accused 4,7, 10 and 15 hit Chatney Sheriff: Accused 7, 10, 12 and 15 and others carried Chatney Sheriff away westwards. This witness introduces a new feature into the case. He says that besides clubs, which all the Accused carried, Accused 2, 4 and 13 had pistols, Accused 4 had a chopper, Accused 7 had a talwar and Accused 13 had a gun. According to him Accused 4 and Accused 13 were carrying three weapons each, all in their hands. Prosecution Witness No.26 says that he was present and heard Accused 12 threaten Chatney Sheriff: Accused 1 hit Chatney Sheriff on the left leg, and Chatney Sheriff fell down; then accused 2, 4, 10 and 12 hit Chatney Sheriff with clubs, and Chatney Sheriff was carried off westwards. According to him Accused 2 and 13 had pistols, and Accused 7 had a talvar. Prosecution Witness No.27 says that he saw Accused 1 hit Chatney Sheriff with a stick: Accused 7 and 15 also hit him: 40 to 50 Hindus were near: some of the Hindus dragged Chatney Sheriff away by the left arm, which is not in accordance with the evidence of the other witnesses, who say that he was carried away. Now all those witnesses I have mentioned are Mahommedans Prosecution Witness No.26 is one of the accused in the case against the Mahommadans regarding the later events of the night which I have mentioned, and so is his step-brother. Prosecution Witness No.27 is also an accused in that case and was arrested in it on the morning of the 8th of May and Accused 1's mother had given evidence against him in the committing Magistrate's Court.

9) But a more curious thing in connection with that story is that Chatney Sheriff himself told a very different story to the District Superintendent of Police on the 15th of May while he was in the hospital. Exactly what he told the District Superintendent of Police, has by what I must regard an unfortunate mistake in the conduct of the defence, not been properly brough out. But quite apart from that statement to the District Superintendent of Police the learned Sessions Judge formed the

opinion that Chatney Sheriff was a disingenuous and untrustworthy witness, and on his own account he is not a man of good character It will be noticed that in his evidence he says that Accused 17 was present. Accused 17 was able to prove by conclusive alibi evidence that he was in Tumkur on that night, and that he was so is not now disputed for the prosecution. Prosecution Witnesses Nos.24, 25 and 26, it will be observed, attribute a very prominent part in what happened in that story to Accused 12. Accused 12 has been able to produce good evidence, which the learned Judge has accepted as true, that he was in another part of Shimoga playing in a concert until a time later in the night, after these events ended, and so he could not have been present at Basavanna Chowk. Prosecution Witnesses Nos.24,25 and 26 give evidence, which, when examined, appears very improbable. According to their story the Hindus had collected with clubs in their hands and were determined to beat all Mahammadans. Those three witnesses according to themselves were allowed to stand quite close to the place where Chatney Sheriff was beaten and so badly injured, and no one hit them or injured them in any way. That makes it appear doubtful whether they were really there and able to see what they profess to have seen. Defence Witness No.5, a Hindu medical practitioner, who appears to be a respectable witness, says that after the serious happenings of that night he was engaged in going about the town seeing what could do to help people, and, while he was going through a part of the town called Clerkpet, about 6 or 7 furlongs from Basavanna Chowk, early the next morning in a motor-car, he found Chatney Sheriff lying in front of a school-house there, and he picked him up and took him to the hospital. Now the prosecution evidence is that Chatney Sheriff was carried or dragged away from the neighbourhood of Basavanna Chowk along the road afterwards. But there is nothing to explain how he could have got so far as Clerkpet. That he was at Clerkpet was one of the things he told the District Superintendent of Police, I may mention, in the statement made by him on the 15th of May, which, as it differs from his statement at the trial, the prosecution have suggested is entirely

untrustworthy.

10) In regard to Nanne Sab the evidence of Prosecution Witness No.24 is that, after Chatney Sheriff was carried away, Nanne Sab came to the Chowk and asked what was the matter: on that Accused 1 hit him on the left leg with a club, and he fell on the ground face-downwards: Accused 1 then hit him on the head with a club. Prosecution Witness No.25 gives similar evidence. He says that it was at the instance of Accused 3 that Accused 1 hit Nanne Sab. Prosecution Witness No.26 also professes to have seen the blows given by Accused 1 but adds that Accused 3 hit Nanne Sab on the head and that Accused 3 and 12 urged the crowd to beat all Mahammadans and burn their houses and shops. Prosecution Witness No.27 says that Accused 1 first hit Nanne Sab on the left leg and afterwards on his head after he had fallen down. I have already mentioned that Prosecution Witness No.26 is one of the Accused in the case against the Mahammadans as is his step-brother, and Prosecution Witness No.27 is also an Accused in that case. There is another witness, Nanne Sab's brother, Baba Sab, Prosecution Witness No.28, who has given evidence in Court that he saw the blows given to Nanne Sab. But he was examined at the inquest on his brother's body on the 8th of May, and then he said he only arrived upon the scene in time to find Nanne Sab dead. In the circumstances it is rather curious that he was put forward as a prosecution witness. I have mentioned that there is reason to doubt whether Prosecution Witnesses Nos.24,25 and 26 would have been allowed to see what happened to Chatney Sheriff. It is even more surprising that they should have been allowed to stay at the spot unarmed and see what happened to Nanne Sab. Prosecution Witness No.24 and Prosecution Witness No.27 both say that it was on the left leg that Nanne Sab was first hit by Accused 1. But it will be remembered that it was his right tibia that was found to be broken, and there was no injury on his left leg. Of course in such occurrences the witnesses might not be sure where a blow fell or on which leg a blow fell. But there is another thing to be noticed about

Nanne Sab's injuries. According to the evidence of the District Medical Officer it is unlikely that he could ha received the very serious injury to his skull which caus death after he had fallen face-downwards on the ground. A there is another curious feature of the evidence in regar what happened to Nanne Sab. It will be observed that Acc 3 is said to have taken a very prominent part in it and by one witness is said to have himself hit Nanne Sab on the h with a club. Accused 3 is the Vice-President of the Shimo District Board. He has been a Bench Magistrate, and he was Vice-President of the Municipal Council. On that night and in the early morning of the next day Accused 3, who is said by this witness to have himself taken part in killing a Muham madan, was going round the town with the Deputy Commissioner to see what assistance could be given to the people who had suffered in the occurrences, and no one suggested that he had had anything to do with the attack on these Muhammadans. And, although a good many houses and shops of Hindus were attacked by Mohammadans, no one attacked his house. He is one of the Accused whom the learned Judge has acquitted.

11 Syed Karim, Prosecution Witness No.23, is the only witness who gives evidence of what happened to him, and he on the 11th of May gave a statement to the District Superintendent of Police, Exhibit P.4, which is entirely different from his evidence in this case. It puts the place at which he was injured, the persons by whom he was injured and the reason why he was injured differently from the story he told in the Sessions Court. The learned Sessions Judge very reasonably refused to believe him and acquitted all those who were charged with having taken part in causing injuries to him.

12 In regard to Zainulabdeen's (P.W.17's) injuries his evidence is that he went to the shop of Prosecution Witness No.18 near the Chowk to pay some money about 9 p.m. Accused 2 and 12 and others were calling out "Beat any Mohammadan you

meet", and there was a row going on: Accused 1 came up and hit him on the head with a stick: Accused 3 hit at him, but the blow fell on his left hand, when he put it for protection: he fell down unconscious and was later on taken to the shop where he was employed some distance away by Prosecution Witnesses Nos.19 and 21. He went the next ~~dx~~ morning to the hospital for treatment and was an out-patient of the hospital. That shows that he was able to go about. But he made no complaint of what had happened to him until the 13th of May. Prosecution Witnesses Nos. 18,19,20 and 21 all say that they saw Accused 1 hit Zainula -deen to his master's shop. Prosecution Witness No.20, who is the nephew of Prosecution Witness No.18 and employed in his shop, appears to be an entirely untrustworthy witness, and he makes a very curious statement in cross-examination, that he did not tell any one what he had seen before the Police examined him a good many days later because he "did not remember" it. Prosecution Witness No.19 was arrested in the case against Mohammadans but discharged. Prosecution Witness No.21's elder brother is an accused in that case. Prosecution Witnesses Nos.19 and 21 say that they were watching what happened outside Prosecution Witness No.18's shop from the opposite side of the main street for about an hour: They could see what happen because two planks of Prosecution Witness No.18's shop wer left open and a petromax light was burning inside. But strangely enough Prosecution Witness No.18 says that almo immediately after Zainulabdeen was hit those two planks i his shop were put up, and he and all the people in the sh ~~xxxxxxxxxxxxxxxxxx~~ went home. Prosecution Witnesses Nos 19 and 21 both say that they saw Accused 17 hit Zainulab- deen. And Accused 17 it is proved was then in Tumkur. No in regard to Zainulabdeen it is not the prosecution case that he was in the centre of a large crowd and so these

witnesses might have mistaken some one else for Accused 17 What is more remarkable in this instance than in the other instances is that the prosecution witnesses should profess to have Seen Accused 17 take a definite part in the occurrences and hit Zainulabdeen, though we know Accused 17 coul not have been there.

(12) But there are other curious features about the case. As I have mentioned, Prosecution Witness No.10, the Police Jamadar, says that he reached the Chowk not later than 9-45 p.m. there were a large number of Mohammadans collected there: but no one could tell him who had injured either Nanne Sab or Syed Karim, who were lying wounded on the road. The Sub-Inspector, who arrived not long after 10-10 p.m., says that no one told him who had caused those injuries. But that is not so remarkable, because by the time he arrived the second disturbance, in which it is alleged Mohammadans attacked the shops and houses of Hindus, had already begun. But far more surprising than the fact that nobody told the authorities who had injured these Mohammadans on the night of the 7th of May is the fact that nobody gave any information for five days. Chatney Sheriff and Syed Karim were both in a bad way when they reached the hospital on the 8th of May, and they were lying ill for some days. So it is not surprising that neither of them could give information at once. But it is a very extraordinary thing that no other Mohammadan of the town could give any information, even if no Hindu was willing to do so. When the inquest was held on Nanne Sab's body on the 8th of May, no information could be had who had injured him. His brother, Prosecution Witness No.28, who professed at the trial to have seen the injuries effectedm said nothing about it then, and there was no information before the Police until Syed Karim made his statement to the District Superintendent of Police on the 11th of May. That is a very extraordinary

feature of this case. Prosecution Witnesses Nos.18,25 and 27 are all Mohammadan shop-keepers, whose shops are within a few yards of Basavanna Chowk. Prosecution Witness No.20 is employed in the shop of Prosecution Witness No.18. It is a very surprising feature of the case that none of those neighbouring shop-keepers was questioned by the Police till after the 11th of May. Syed Karim made his statement on the 11th of May in the hospital. Mohamed Khasim, Prosecution Witness No.18, made a statement on the 12th of May. And on that day Baba Sab, Prosecution Witness No.28, who had not been able to give any information at the inquest, offered his personal and direct evidence to the Police. Zainulabdeen, who was able to go about ever since the morning of the 8th of May, made his complaint to the Police, Exhibit P.6, on the 13th of May. Prosecution Witnesses Nos.24,25 and 26 were examined by the Police on the 14th of May, though Baba Sab says that they had told him two days before that they could give evidence in the case, and he appears to have been in touch

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touch with the Police all along. Chatney Sheriff's statement was made on the 15th of May, i.e., 8 days after the event. It has been suggested in explanation of this extraordinary failure of any one to come forward and give information in regard to these very serious happenings that all the Muhammadans, who could give evidence, were afraid of coming forward, because, if they admitted they knew anything about what had happened that night, they might be arrested and implicated in the case regarding the attack on Hindu shops and houses by Muhammadans. Some of those who had guilty conscience might perhaps be reluctant to come forward. Others might be nervous about it. But against that explnation must be put the consideration that in such circumstances, when there was a very serious case against the Muhammadans for what they were alleged to have done to Hindus, surely it would have been not unnatural that any muhammadan, who could give information that on the other side of the account a Muhammadan had been killed and three other Muhammadans seriously injured by Hindus, should come forward. It is a very strange thing in this case that no information was available against any of the Accused in the case for so many days, when there were witnesses whose evidence could have been obtained, if they had not themselves come forward, by an enterprising investigating officer.

(14) All the Appellants before us denied that they had anything to do with the injuries to these Muhammadans. Accused 1 said that his shop was burnt and looted by Muhammadans that night; and the evidence shows that it was looted and its contents burnt, and, as is admitted, it was his mother who gave information about the disturbance to the Police. Accused 7 is the brother of Accused 1, and Accused 15 is the brother-in-law of Accused1, and that is the explanation they give why they have been falsely implicated in the case. Accused 2 is one of the persons whose shops were pillaged that night, and according to the Municipal Overseer, Prosecution Witness No. 7 he suffered a loss of five or six thousand rupees on that occasion. He complained to the Police about that on the 8th of May, and on the 10th of May he identified some Muhammadan accused in that case. It was after that that information was brought against him in the present case. Accused 4 is the brother of Accused 2. Accused 10 is another person whose shop and house were burnt on the night of the 7th of May and he complained of that on the 8th of May. It is suggested by all these Accused that they have been implicated in the present case as a retaliatory measure, because they are sufferers and complainants in the other case.

15 There is no doubt that, as the learned Judge has thought Chatney Sheriff and Syed Karim are entirely untrustworthy witnesses, and there is very grave doubt I think whether the other witnesses- the other professed eye-witnesses- are trustworthy. The story now told against these Accused was bottled up for days, and there is no sufficient explanation of that. It was brought forward against men who had already complained against Muhammadans of their own misfortunes, and two of the Muhammadan accused are among these witnesses.

16 After hearing the whole of the voluminous evidence in the case and the prolonged arguments which have been addressed to us, I feel that the evidence is certainly not trustworthy enough to support the conviction of any of these appellants, and in my opinion they should be acquitted.

17 But there are some other matters to which I must refer in connection with this case. A number of prosecution witnesses had made statements to the Police during the course of the investigation of this case, and those statements in a number of instances it was alleged did not agree with the evidence which they gave in Court. The defence naturally wished to contradict the witnesses with their previous statements to the Police; but in many instances the proper procedure for doing so was not followed. I am told that in the Courts of the State the proper procedure laid down in Section 162 of the

the Code of Criminal Procedure is not followed when it is desired to contradict a witness at the trial by the record of what he stated before the Police in the investigation of the case at an earlier stage. In many instances in this case a witness was asked whether he had told the Police something, and he denied it; but the record of what he said to the Police was never produced nor any copy of it. At a much later stage in the case a Police Officer was asked to give oral evidence of what the witness had said. Chatney Sheriff had made a statement to the District Superintendent of Police, about which we have heard a great deal. He denied that he ever made such a statement. But the statement was never produced and never shown to him. That method of trying to impeach the evidence of a prosecution witness by comparing it with what he said to the Police in the course of the investigation of the case but without confronting him with the record of what he said is illegal, unfair and unbusiness-like. If the defence in those circumstances wishes to get the full effect out of a contradiction between what the witness says at the trial of a case and what he said previously to the Police during the investigation of the case, it is obviously necessary for them to take proper steps to make out either that the contradiction is wilful or that the witness is unable to give any reasonable explanation of it. If they do not take proper steps to do that,

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they are not making the full use of the contradiction nor getting the full help they wish from it. It is unfair to the witness not to confront him with the record of what he has said before. Many a witness will deny that he made a certain statement, sometimes from a defect of memory, but will admit it when the record of his previous statement is produced and read by him or to him. Many a witness, who appears to have made a contradictory statement on a previous occasion, can give a reasonable explanation of it when the record of the previous statement is put before him and his memory is refreshed regarding it. It is unfair not to give him the opportunity of seeing or, if he is illiterate, hearing the record of what he said on a previous occasion or a certified copy of it. And not to give him that opportunity is clearly against the provisions of Section 162 of the Code of Criminal Procedure, which provides that, when copies of the statements of prosecution witnesses to the Police are supplied to the defence, they may be used for the purpose of contradicting the witness in accordance with the provisions of Section 145 of the Evidence Act. That section runs "A witness may be cross-examined as to previous statements made by him in writing or produced into writing, and relevant to matters in question, without such writing being shown to him or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him." If a witness is asked whether he made such and such a statement to the Police in the course of the investigation, which disagreed with his statements at the trial, he may admit it, and

and there is no question of proving it. But, if he desnies it, he is entitled to have the copy of the statement which he has been supplied to the defence shown to him or read to him. If he then admits it, again there is no question of proff. If he fails to give any reasonable explanation of the contradiction, then to that extent his credit is impeached. If he persists in his denial, the statement has to be proved, and it can be proved by examining the officer who recorded it; and the officer will then be open to cross-examination in regard to the method adopted by him in recording the previous statement, the circumstances in which it is was recorded and any other relevant matters connected with it. That is obviously a fair way of treating the witness, when it is desired to contradict him by a previous statement, which he has made to the Police, and that is the method prescribed by the section. I hope it will be followed in the Courts in future. It appears probable that, if the defence had followed that method in the present case, they would have been able to damage the prosecution evidence even more than they have done.

18) E But there is a much more serious feature of this case than that. Very serious allegations have been made by the prosecution against the District Superintendent of Police, Prosecution witness No. 29 and other public officers. The Public Prosecutor of Shimoga, when the District Superintendent of Police was in the witness-box asked for permission to cross-examine him as a hostile witness. As I have mentioned, the District Superintendent of Police had taken a

a statement from Syed Karim, Prosecution Witness No.23, in the hospital in the 11th of May; and he has taken a statement from Chatney Sheriff, Prosecution Witness No.22, on the 15th of May. Those statements differed materially from the prosecution story as told at the trial and were very damaging to the prosecution case. The Public Prosecutor alleged that neither Syed Karim nor Chatney Sheriff was in full possession of his mental capacity when he made his statement to the District Superintendent of Police. It was in connection with the statement of Chatney Sheriff that the Public Prosecutor applied for permission to cross-examine the District Superintendent of Police as a hostile witness. Now that was a very insulting thing to do. The obvious implication was that the District Superintendent of Police was not going to give true evidence unless he was forced into it by leading questions in cross-examination. He was hostile according to the Public Prosecutor to the case which was being conducted on the basis of the investigation which he had ordered and initiated. He was, as the Public Prosecutor implied, prepared to prejure himself. The Public Prosecutor does not seem to have realized the seriousness of what he was doing when he made the allegation that it was necessary for him to treat the District Superintendent of Police as a hostile witness. I am astonished that the learned Sessions Judge should have permitted him to do so, as he did after being

being pressed by the Public Prosecutor more than once. The whole of the evidence of the District Superintendent of Police has been read to us, and the learned Public Prosecutor has not been able to put his finger on a single word in the evidence, before the stage at which he made that astonishing request that he should be allowed to cross-examine the District Superintendent of Police as a hostile witness, to justify that implication. So far as the record goes, it was an entirely unjustifiable insult, which the Public Prosecutor had no right whatever to make against an officer, who had come merely to give evidence of matters which was within his official knowledge. The Public Prosecutor appears to have shown his prejudice against the District Superintendent of Police to the extent that he even suggested that it was improper that the District Superintendent of Police should have taken any hand in the investigation of this case and should have recorded the statements of any of the witnesses. Such a suggestion could only be made by one who was entirely ignorant of the duties of a District Superintendent of Police. I have ascertained with the help of the learned

Government Advocate that it is the desire of the Government and the duty of the District Superintendent of Police - as it is in other parts of the country - that the Superintendent should himself take part in the investigation of serious cases such as this. But the Public Prosecutor thought fit to go out of his way and suggest that the District Superintendent of Police, when he took statements from Syed Karim and Chatney Sheriff, must have been taking an improper interest in the case.

The Public Prosecutor went much further than that. He suggested, and made every effort to prove, that the District Superintendent of Police took statements from Syed Karim and Chatney Sheriff in the hospital when they were quite unfit to make any statement, when they did not know what they were saying, and that he did so in order that the case might be spoiled and that the Hindu Accused might be helped. In regard to the statement of Syed Karim it happened that the District Superintendent of Police took it while Syed Karim ~~im~~ was in the hospital and that, two of the doctors attached to the hospital being there at the time, he asked them to be present and to attest that statement in order to show that Syed Karim, who had been seriously injured and who had been unconscious and not in a fit condition to make a statement on previous days, was then in a proper condition to do so. It is a very usual and proper course, when a public officer or a magistrate takes a statement

statement from an injured man in hospital, to have one of the Hospital Doctors present in order that he can certify later on, if necessary, that the witness or the person making the statement was fully conscious and in a proper mental condition to make his statement at that time. That precaution the District Superintendent of Police took in this case. And even the fact that he took that very usual and proper precaution has been used as a handle against him. Now both those doctors, Prosecution Witnesses Nos. 8 and 9, have given evidence in this case that Syed Karim was quite able to make a statement when he made the statement, Exhibit P.4, on the 11th of May. Beyond that the District Medical Officer, Prosecution Witness No. 22, who was in charge of the Shimoga Hospital, has given evidence that on the previous evening, the 10th of May, he informed the District Superintendent of Police that Syed Karim was in a fit condition to make a statement and that the next morning before the statement was made he verified the fact, by examining Syed Karim, that he was quite fit to make a statement. The evidence goes still further. He says that he happened to visit the Hospital at the time when the District Superintendent of Police was recording Syed Karim's statement, Exhibit P.4, in the company of the Deputy Commissioner and District Magistrate: they stayed in the ward where the District Superintendent of Police was recording

the statement for 3 or 4 minutes while he was doing so: the District Magistrate spoke to Syed Karim, and Syed Karim thanked the District Magistrate for the interest he was taking in him: the District Superintendent of Police handed to the District Magistrate the record of Syed Karim's statement, so far as it had gone, and the District Magistrate read it and gave it back. It will be seen that if, as has been suggested by the Public Prosecutor, the District Superintendent of Police was taking a statement from Syed Karim at a time when Syed Karim was not mentally fit to make a statement, the District Medical Officer is implicated in that allegation and the Deputy Commissioner and District Magistrate also, besides the two Hospital Doctors, Prosecution Witnesses Nos. 8 and 9.

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But that did not satisfy the Public Prosecutor. He was not prepared to stop at that. In order to prevent the Accused getting any benefit from these contradictory statements, which had been made by Syed Karim and Chatney Sheriff to the Police, he strained every effort to get something to show that they were not in a fit state when they made the statements. He put in an application to the Sessions Court that two witnesses might be examined to prove the condition of Syed Karim and Chatney Sheriff when they made the statements and that their records - the history sheets of the hospital - might be produced. The two witnesses he wished to examine were two more Doctors

Doctors of the Hospital. One of them was examined as Prosecution Witness No. 31. His evidence did not support the Public Prosecutor's allegations. On the contrary it supported the story of the District Superintendent of Police and of the District Medical Officer that Syed Karim was quite in a fit condition to make a statement on the 11th of May. The history sheets which were produced - Exhibits P.11 and P.12 - also supported the District Superintendent of Police and the District Medical Officer. One might have thought that at that stage at least the Public Prosecutor would have admitted that he had made a mistake. He had cited another doctor before the Sessions Court. This time it was a Mahomedan Doctor, and he was treated in a very extraordinary way. After he had been summoned - and as I understand had attended the Court - the Public Prosecutor represented to the Sessions Judge that he was had turned hostile, that is, that he had been willing and prepared to give evidence for the Public Prosecutor's contention that these men were in an unfit condition to make statements to the District Superintendent of Police but had changed his mind and was prepared to give false evidence that they were in a proper condition to make such statements. Now that unfortunate doctor had never even appeared in Court. But the Public Prosecutor did not hesitate to make this dreadful allegation against him. In regard to the condition of Chatney Sheriff on the 15th

15th of May the District Medical Officer says he sent word beforehand to the District Superintendent of Police that Chatney Sheriff had become in a condition fit to make a statement. And the additional witness called by the Public Prosecutor in the Sessions Court, Prosecution Witness No.31, says that he can give evidence of his personal knowledge that Chatney Sheriff was in a proper condition to make a statement on the 15th of May. But in spite of that, when obviously on the evidence the Public Prosecutor had failed to make out his extraordinary allegations against these officers, he did not express regret for the dreadful thing he had done, but persisted in his allegations to the end.

He did not withdraw them
He did not apologise.

(21) I will read what the learned Sessions Judge has said about it. Speaking of the comparison between the statements of Syed Karim and Chatney Sheriff as witnesses at the trial and the statements which they made to the District Superintendent of Police, he says that:

"It will be sufficient here to say that the evidence given in Court was more full than what was stated before the Police and in some instances different. That had to be explained and the prosecution have chosen to adopt the evidence of these witnesses given in Court and impeach the statements before the Police. The prosecution allege that in order to help the

Hindus

Hindus the investigating officers have not done their work honestly. The District Superintendent of Police has been definitely treated as hostile. The other Government Officers are not openly stated to be so, but their examination clearly reveals that the prosecution are not prepared to accept their evidence in its entirety. The District Medical Officer swears that Syed Karim and Chatney Sheriff were quite conscious and able to give statements on the days the District Superintendent of Police recorded their statements. Doctors Parthasarathy, Venugopal and Rangaswami Iyengar support him and the case sheets of the patients, and the accident Register are produced.

"And what is the evidence to rebut the sworn testimony of these officers supported by the records of the hospital? Except the evidence of the affected persons themselves who now want to impeach their former statements, there are no // materials placed before the Court to show that these officers have not merely failed in their duty but have actively abused their powers. The prosecution have not chosen to place before the Court on what materials they impeach the conduct of the officers, when they became aware of their conduct, and on what investigation they have accepted the later version of the affected person as true in preference to their earlier statements

"The attitude of the prosecution towards these statements has not become quite clear to me

Public Prosecutor conceded they were not fabrications. So Mr. Dwarakanath (i.e. the District Superintendent of Police) may be acquitted of the charge that he wrote down what they never said. His bona fides was not questioned but it was stated that he took down their statements when they were not in a fit condition to depose. What exactly does this mean? Does it mean that they gave their statements when in a sort of delirium or when their thoughts were not coherent? Was the District Superintendent of Police aware of their state or condition: if he was, then I see no difference in his conduct between this and an actual fabrication. If he was not aware, was it possible for all these medical men to be deceived? Mr. Alli Hussein, Sub Assistant Surgeon to examine whom the prosecution took special permission, has been dispensed with by the prosecution as hostile. In his memo of 17-10-1933 the Public Prosecutor has not hesitated to suggest that the medical sheets may be suppressed or lost. What are the materials on which these serious allegations are made?

"As regards the evidence of Chatney Sheriff and Syed Karim I shall discuss it in detail later on. It is sufficient to say here that Syed Karim and Chatney Sheriff both have scruples to go back on what they stated in the committal Court. I shall try and show also later on, that their statements cannot have been 'involuntary'.

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"There is absolutely no evidence before the Court to show that the District Superintendent of Police and the Medical Officers have conspired and are perjuring themselves here in their desire to help the Hindus".

22 The learned Public Prosecutor has explained that he did not allege that the statements were fabricated by the District Superintendent of Police. And it appears that at one stage he told the Sessions Judge that he did not attack the good faith of the District Superintendent of Police and the medical officers who were examined. But it was of no use to adopt that language so long as he persisted in his allegation that those statements were taken from the witnesses when they were not in a mental condition to make them. Assuming that the medical officers have given incorrect evidence that these men, whom they had been attending and of whose condition they must have been aware, were in a condition to make statements, as the Public Prosecutor has alleged, how could they give such evidence in good faith? How could the District Superintendent of Police have recorded the statements of these witnesses in good faith if the witnesses were not in a condition to make statements and if, as alleged, he deliberately took them from the witnesses when they were not in a fit condition in order that he might spoil their case and help the Hindus? It is useless

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to pretend that the Public Prosecutor did not attack the good faith of the District Superintendent of Police; he was doing nothing else. And as the learned Judge himself points out, it is no use to quibble with words and say that the Public Prosecutor did not allege that the statements were fabricated. His allegations amount to accusations that the District Superintendent of Police fabricated false statements - statements which did not represent the kinds of the men who are said to have made them. The learned Judge has said that the prosecution alleged before him that, in order to help the Hindus, the investigating officers had not done their work honestly. When the Public Prosecutor was asked this morning in this court what was the meaning of that, he said that it was not what he had alleged. As the defence were trying to make use of those statements of Syed Karim and Chatney Sheriff as representing their first story in contradiction of the stories told in court, it cannot have been the defence who made that allegation. And where did the learned Judge get it if not from the Public Prosecutor? The Public Prosecutor admits that never until this morning did he protest that he had not made that allegation. The learned Judge observes: "there are no materials placed before the Court to show that these officers have not merely failed in their duty but have actively abused their powers." Who made that suggestion? Who could have made it but

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but the Public Prosecutor? The learned Judge says "there is absolutely no evidence before the Court to show that the District Superintendent of Police and the medical officers have ~~xxxxx~~ conspired and are perjuring themselves in their desire to help the Hindus" Who made that allegation, who could have made it except the Public Prosecutor? Those were allegations so improper in the mouth of the Public Prosecutor that it is difficult to characterise them in the right language.

23 I have never heard of a Public Prosecutor conducting a case in such a way. It is conceivable that a public officer might betra his trust and fabricate evidence to support a false case; and no one would be prepared to be more severe to a public officer, who after proper inquiry and after a proper opportunity of defending himself was shown to have done such a thing, than I should be. But public officers like other persons are entitled to be treated with elementary fairness. The proper time for making such allegations and for trying such allegations, if they have to be made against any public officer in connection with a criminal case, is after that criminal case has been disposed of. No one could have complained reasonably, had the Public Prosecutor really thought it necessary after the conclusion of this case to initiate or to ask for the initiation of, proceedings against the officers, whom he has accused in this case, if he had done so after the trial and the appeal were over, if Public Prosecutor finds in the course of a ca

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which he is conducting that any of the officers connected with it has fabricated evidence against accused persons, it is clearly his duty to tell the Court at once that he will not rely upon or use such evidence. If he finds that in the investigation upon which the prosecution is based something has been done which unduly favours the accused, or even that some record has been made which gives them a false advantage, he must recognise and face the fact that that is a weak spot in his case, and he must try to put the strong points in the case against it. Here the Public Prosecutor thought that the statements of Syed Karim and Chatney Sheriff to the District Superintendent of Police were weak spots in his case. What did he do? He tried to cover up those weak spots by throwing a cloud of mud on his own witnesses and included in the wholesale aspersions which he threw about three executive heads of the District -- The Deputy Commissioner and District Magistrate, the District Superintendent of Police and the District Medical Officer -- and four other medical officers, including one who was never brought into court. And all this was done on the word of two patently untrustworthy witnesses, who denied that they had made those statements to the District Superintendent of Police -- Syed Karim and Chatney Sheriff! And, even when it was clear to any reasonable man that his allegations could not be made out, the learned Public Prosecutor persisted

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in them to the end. We expect a Public Prosecutor to conduct his cases with scrupulous fairness. It is a principle of our trials that an accused person shall be presumed to be innocent until he is proved to be guilty. The learned Public Prosecutor of Shimoga thinks fit to treat his own official witnesses in a very different way. He asked the Sessions Judge to assume that they were rogues, to assume that they were criminals who should not only be dismissed from the public service but ought be serving long terms of imprisonment. And all that in order that he might get convictions in this case. He held up all these officers to public obloquy when they had no chance whatever of replying to him, when it was nobody's business to say a word against him in their defence. He attacked them in the back when they were at his mercy. For the sake of a temporary advantage he adopted a xourse, which, if it were followed regularly, would be most disastrous to the public interest. If the idea once got abroad that a public officer giving evidence of matters in his official capacity who dared to say anything in favour of an accused person, would be treated like that, of what weight would the evidence of a public officer be in any court? If public officers are to be treated like that, then the public service will be degraded and the Government itself brought into contempt.

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24 In my opinion the learned Public Prosecutor erred very grievously in the course which he adopted. In his anxiety to win a victory in this case he appears to have lost his head and to have forgotten the character of his office and to have forgotten even the ordinary fairness which is expected of the most junior member of the Bar. In regard to his insulting conduct to the District Superintendent of Police he has now expressed his regret, and I am glad to put that on record. In regard to Doctor Alli Hussain, against whom he made a most serious allegation — though Doctor Alli Hussein was never put into the witness-box — I have heard no expression of regret. I have only heard that he treated Doctor Alli Hussein in that outrageous way because the Police Officer, who had conducted the prosecution in the committing Magistrate's Court, suggested that he should do so. But I am glad to say infavour of the Public Prosecutor that he has not attempted to shelter himself under the instructions of any superior officer. He has told us that he was led to conduct the case in the extraordinary way which he adopted by what was said in the committal order and partly by the suggestions of the junior Police Officer, who conducted the prosecution in the committing Magistrate's Court and by the time the trail began had become the Superintendent of Police of Shimoga. In the order of the committing Magistrate there are insinuations, very improper insinuations and entirely unnecessary insinuations, against the District Superintendent of Police. The Public Prosecutor, as soon as he read them, ought to have realized that they were improper and provided him with no reason whatever for adopting the course which he chose in the Sessions Court. Indeed they should have been a warning to him to avoid that course. As for the Police Officer who instructed the learned Public Prosecutor, I cannot understand why, if that Police Officer gave the Public Prosecutor the suggestions and instructions of which he has told us, he did not at once go to that officer's superior, the District Magistrate, and ascertain whether it was the desire of the District Magistrate that he should conduct the case in that way.

I may add in regard to the first Superintendent of Police, who took the statements from Syed Karim and Chatney Sheriff, it is clear that the authorities were at the time the proceedings in the Magistrate's Court began not dissatisfied with the way in which he had conducted the investigation, as he was himself appointed Special Public Prosecutor to conduct the case and was only excused from that duty because very properly he represented that he had taken part in th investigation and therefore ought not to be the Special Public Prosecutor.

There is one other matter to which I must refer. The trial was finished in the Sessions Court in December 1933; but judgment was not pronounced until more than four months later. It has been suggested that the learned Sessions Judge deferred pronouncing judgment in this case because he was waiting till he finished the case against the Muhammadans for the part it was alleged they had taken in the later events of the 11th of May. It was quite unnecessary and improper for the learned Judge to put off delivering judgment on that account. This case is not, we are told, a counter-case to the other one in the sense that the two cases represent two versions of the same events. Sometimes such counter-cases do come before Courts. And, when two cases, which are really counter-cases in that sense, are before a Magistrate, it is often desirable that he should defer delivering judgment in case A until he has heard the whole of case B also, not in order that he may not mix up the evidence in the two cases -- because he is bound to give a decision in each case only on the evidence in that case -- but in order that he may see whether there is any evidence brought out incase B which he should properly bring on record by further examination of witnesses in case A or vice versa before he delivers judgment in either case. But the reasons which apply to such cases in a Magistrate's Court do not apply to sessions cases, where each ~~exam~~ trial is finished before another trial is begun. It is not only inconvenient but improper that the same Jury or the same Assessors should hear both of two counter-

cases,

counter-cases, if two counter-cases by any chance happen to be committed to sessions. The Judge, who has heard the first of the two counter-cases, is not only debarred from looking into the evidence in the second case in order to use it in the first case, but he must keep his mind in dealing with the first case entirely free from anything which he learns after conclusion of that case. Even if this case and the case against the Muhammadans, which I have mentioned, had been counter-cases, there would have been no justification for the learned Judge postponing the delivery of the judgment in this case until he had finished the other trial. When the record is so voluminous as in this case, the Judge may well take a few days to study the record and to refresh his memory of the evidence before he delivers judgment. But it was altogether outrageous to keep the Accused in this case, who had been tried for most serious offences, waiting for more than four months to know whether they were to be convicted or acquitted, and the learned Judge cannot have realized what a heartless thing that was to do.

As I have said, this case appears to me to be a very unsatisfactory one. The investigation does not appear, so far as the evidence goes, to have been as prompt as it should have been. The trial was spun out to an inordinate length. It went on for seven weeks, and I see nothing in this case to justify that. Neither side treated the witnesses fairly, though I do not mean to suggest that there is anything comparable in the way in which the defence did not give the prosecution witnesses proper opportunities to explain contradictions and the treatment of the official witnesses by the Public Prosecutor. And the learned Judge without any justification that I can see put off pronouncing judgment for an extraordinary long time. There is no reason why either in Civil or criminal cases parties and witnesses should not be treated fairly and humanely. Indeed, it is the duty of everyone connected with the Courts so to treat them. Unfortunately in this case that has not been done.

Cd/- H.J.C.Reilly,

CHIEF JUSTICE.

MR. JUSTICE CHARI :--

I agree.

Sd/- A.S.R. Chari,

J U D G E.

"C O P Y"

hks.4

CB 802

CB 161-33-2

To

The Chief Secretary
to Government of His Highness The Maharaja
of Mysore, Bangalore.

Through,

The Deputy Commissioner,
Mysore District,
Mysore.

Sir,

I beg to submit my humble representation for the sympathetic consideration of the merciful and benign Government.

2. I have obeyed the Government order No.3789-92/CB 161-33-1 dated 16th June '34 by which I was reduced to the grade of an Amildar. I have now served 4 months in such degradattion with all humility.

3. I may be pardoned if I were to recall the grounds under which I was punished. It is stated in the Government order that in connection with the investigation of the Rioting cases which occurred in 1933 at Shimoga (1) I was partial to the Hindus and that (2) I took down the statements of the two injured mohammedans (a) when they were not in a fit state to make coherent statements, (b) that it was not my duty to take them (c) that my obtaining the signature of the parties was illigal, and that (d) I placed on record statements I knew to be false and likely to be damaging to the prosecution.

4. In my explanation submitted in October '33, I had stated that as the cases were then subjudice and on account of the atmosphere which then existed, it would have better met the ends of justice if my explanation were arranged to be obtained after the judicial pronouncements were made.

5. Now that the cases have all terminated before the Judicial tribunals, I now crave the indulgence of Government

to kindly reconsider the order in the light of the pronouncements made by the Sessions Judge and the Honourable Judges of the High Court concerning the very charges on which I have been condemned and in consequence of which I have been suffering the pains and penalties affecting the rest of my official service and private life.

6. Now that the facts are presented in their true perspective and I have been completely exonerated by the judicial tribunals in the State even as I have already submitted in para 19 of my explanation and having regard to all the circumstances of the case and the long and honourable career I have had, I implore that Government would be pleased to generously restore me to the position which I should now have held but for the Government order.

I beg to remain,
Sir,
Your most obedient servant,
V. Duraiswamy

C1946/34-35-HS

9th Nov 34.

OFFICE OF THE REVENUE COMMISSIONER (M)
No. HS
12 NOV. 1934
LORE. SECRETARY

1844-34

CB-804

CHIEF SECRETARY
CB
21 NOV. 1934

Forwarded with Comts to the Rev Comr in Regrets for favour of transmission to the Chief Secy to Govt.

Regrets
10.xi.34.

Dy Comr

No C1946/34-35
21/11/1934.

Forwarded with Compliments

19/11/34

Rev Comr
21/11/34

CONFIDENTIAL.

21st January 1935.

3732/C.B. 161-33-3

Encl.

F. A. Hamilton, Esq., C.I.E.,
Inspector General of Police in Mysore.

I am directed to forward herewith, for favour of your remarks, a copy of the representation submitted by Mr. V. Dwarakanath, for reconsideration of the Government Order No. 3789-92/C.B. 161-33-1 dated 16th June 1934, directing his reduction to the grade of an Amildar.

I have the honour to be,

Sir,

Your most obedient servant,

Chief Secretary to Government.

Rough/fair draft

1574 C.B. 161-33-3
Encl

CONFIDENTIAL.

4/1/35

To

The I. G. of Police in Mysore,

Bangalore.

Sir,

I am directed to forward herewith, for favour of your remarks, a copy of the representation submitted by Mr. V. Dwarakanath, for reconsideration of the G.O. No. 3789-92/C.B. 161-33-1 dated 16th June 1934, directing his reduction to the grade of an Amildar.

I have etc.,

RR
2/1/35

Chief Secretary.

POLICE DEPARTMENT.

CB 1209
CB 161-33-4

Tel. Address
"POLICE"

PHONE No. 298

CONFIDENTIAL

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,

When replying please quote No. C. 81/34-35

Dated Bangalore, 24th January, 1935.

FROM

F. A. HAMILTON, ESQ., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

RR 25731

To

Rajasevasakta
R. Ranga Rao, Esqr., B.A.,B.L.,
Chief Secretary to the Government of
His Highness the Maharaja of Mysore,
BANGALORE.

CHIEF SECRETARY
25 JAN. 1935

C 85/1/85

SIR,

With reference to your letter No.1572/C.B. 161-33-3 dated the 21st instant, forwarding a further representation by Mr. V. Dwarakanath, I have the honour to draw your attention to my letter No.C.C.134/32 dated the 1st May 1934.

The representation now made contains no new facts and what has been said in my letter referred to above regarding the opinion of the Sessions Judge, Shimoga, applies with equal force to the Hon'ble the Judges of the High Court. Mr. Dwarakanath was not on trial before the Judges nor were all the facts concerning his conduct represented to them. The order passed by Government reducing Mr. Dwarakanath to the grade of Amildar is based on facts of vital importance which were not before these Judges, who, on the partial representation of them placed before them in the High Court, were not in a position to pass judgment on the conduct of Mr. Dwarakanath. The so-called exoneration of Mr. Dwarakanath is, therefore, valueless and his conduct in connection with the cases dealt with by them was fully considered by Government in passing orders in his case. I, therefore, see no need to reconsider the order passed by Government concerning Mr. Dwarakanath, or for any consideration of his latest representation.

I have the honour to be,
Sir,
Your most obedient servant,

INSPECTOR GENERAL OF POLICE.

HLR.

Appendix F G—1]

SUBJECT .....

.....

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Section C.J
File No. 161-33
Serial No. 5

Diary No. of letter replied to .....

No. 1871

To The Revenue in Mysore.

Sir,

General and Revenue Secretariat

( )

the *193* .

Date of issue 6/3/35

Signed by Dy

With reference to your memo No. C 1946 of 34-35 dated 21st Nov. 1934 forwarding a representation from ~~the~~ Govr. Devanahalli for reconsideration of Govt Order No. 3789-92/CB. 161-33-1 dated 16th June 1934, directing his reduction to the grade of ~~the~~ Amildar, I am directed to state that Govt see no reason for modifying the orders already passed in the matter.

List of enclosures .....

Thanks etc.

RR 5/3/35

Ch. Secy to Govt

C 1/3/35

Copied by .....

Copy to D. G. of Police with reference to his letter No. CC 81/34-35 dated 24 Jan 1935.

By order

1871/35

Examined by 6/3/35

WD 0677—G P B—15,000—8-11-33

6th
~~5th~~ March 5.

1871/C.B. 161-33-1

N. Madhava Rau, Esq., B.A., B.L.,
Revenue Commissioner in Mysore.

With reference to your memo No. C.1946 of 34-35 dated 21st November 1934, forwarding a representation from Mr. V.Dwarakanath, for reconsideration of Government Order No. 3789-92/C.B. 161-33-1 dated 16th June 1934, directing his reduction to the grade of Amildar, I am directed to state that Government see no reason for modifying the orders already passed in the matter.

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- R. Ranga Rao,

Chief Secretary to Government.

MEMO NO. 1874/C.B. Dated, Bangalore the 6th ~~5th~~ March 1935.

Copy of the above is forwarded with compliments to the Inspector General of Police in Mysore with reference to his letter No. C.C.81/34-35 dated 24th January 1935.

By Order,

for Chief Secretary to Government.